

Opinion of the Court.

WOLFE v. HARTFORD LIFE AND ANNUITY  
INSURANCE COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF NEW YORK.

No. 162. Submitted March 23, 1893. — Decided March 27, 1893.

A complaint which avers that the plaintiff was, at the several times named therein, "and ever since has been and still is a resident of the city, county and State of New York," is not sufficient to give the Circuit Court of that circuit jurisdiction on the ground of citizenship of the parties, when the record nowhere discloses the plaintiff's citizenship.

THE case is stated in the opinion.

*Mr Robert S. Green* and *Mr Henry Thompson* for the plaintiff in error.

*Mr Herman Kobbe* for defendant in error.

THE CHIEF JUSTICE: The complaint in this case avers that the plaintiff was at the several times mentioned therein, "and ever since has been and still is, a resident of the city, county and State of New York," but his citizenship is nowhere disclosed by the record.

It is essential in cases where the jurisdiction depends upon the citizenship of the parties that such citizenship, or the facts which in legal intendment constitute it, should be distinctly and positively averred in the pleadings, or should appear with equal distinctness in other parts of the record. It is not sufficient that jurisdiction may be inferred argumentatively from the averments. *Brown v Keene*, 8 Pet. 112, 115, *Continental Ins. Co. v Rhoads*, 119 U. S. 237, *Menard v Goggan*, 121 U. S. 253.

*Judgment reversed at the cost of plaintiff in error and the cause remanded for further proceedings.*

Counsel for Appellee.

OGDEN *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF LOUISIANA.

No. 1184. Submitted March 20, 1893. — Decided March 27, 1893.

The appeal in this case from a decree of the Circuit Court in a suit against the United States brought under the act of March 3, 1887, 24 Stat. 505, c. 359, not having been taken until August 9, 1892, is dismissed.

THE appellant brought this suit against the United States under the act of March 3, 1887, 24 Stat. 505, c. 359. The amount claimed exceeded the sum necessary to give this court jurisdiction on appeal. The bill was dismissed June 27, 1892. The application for appeal was made August 9, 1892. On behalf of the appellee the following motion was made "And now, March 20, 1893, comes the Solicitor General, on behalf of the appellee, and moves the court to dismiss the appeal herein — for that such appeal is not authorized, by the act of March 3, 1891, 26 Stat. 826, entitled 'an act to establish Circuit Courts of appeals,' and so forth, and because such appeal is without the authority of law, and this court, therefore, is without jurisdiction of said appeal." and with this motion was also submitted a statement of the appellants' counsel in which, acknowledging notice of the motion, he said "I am anxious that the question shall be determined, the time you give me, however, is too short to prepare or file a brief. I accept your communication of the 13th as notice and waive any other, asking you in making the motion to state to the court that, so far as appellant is concerned, the case is submitted for construction of the statute conferring jurisdiction on the Circuit Courts in actions against the government, and whether that act conferring special jurisdiction with special procedure is affected by the general act creating the Circuit Courts of appeal."

*Mr Solicitor General* for appellee in support of the motion.